

HOUSE BILL No. 1754

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-4-1.

Synopsis: Sales tax collection by small vendors. Provides that a person who sells tangible property as part of a hobby is not selling at retail and is not liable for collecting the state gross retail tax on sales.

Effective: July 1, 2003.

Pflum, Grubb

January 21, 2003, read first time and referred to Committee on Ways and Means.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1754

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-4-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) A person is a
3 retail merchant making a retail transaction when he engages in selling
4 at retail.

5 (b) A person is engaged in selling at retail when, in the ordinary
6 course of ~~his~~ **the person's** regularly conducted trade or business, ~~he~~
7 **the person:**

8 (1) acquires tangible personal property for the purpose of resale;
9 and

10 (2) transfers that property to another person for consideration.

11 (c) **A regularly conducted trade or business does not include a**
12 **hobby or leisure activity:**

13 (1) **in which a person engages infrequently; and**

14 (2) **that produces income that the department considers de**
15 **minimis.**

16 (d) **For purposes of determining what constitutes selling at retail, it**
17 **does not matter whether:**



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(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

~~(d)~~ **(e)** Notwithstanding subsection (b), a person is not selling at retail if ~~he~~ **the person** is making a wholesale sale as described in section 2 of this chapter.

~~(e)~~ **(f)** The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any service; and

(2) except as provided in subsection ~~(g)~~, **(h)**, any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

~~(f)~~ **(g)** Notwithstanding subsection ~~(e)~~, **(f)**:

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the gasoline or special fuel minus the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

~~(g)~~ **(h)** Gross retail income does not include income that represents charges for serving or delivering food or beverages furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food or beverages when the purchaser pays the charges.

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